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6 **UNITED STATES DISTRICT COURT**  
7 **EASTERN DISTRICT OF CALIFORNIA**  
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11 NEIL ALDEN LEASH, ) Case No.: 1:24-cv-01123-SKO (HC)  
12 )  
13 Petitioner, ) FINDINGS AND RECOMMENDATIONS TO  
14 ) SUMMARILY DISMISS PETITION FOR WRIT  
15 v. ) OF HABEAS CORPUS FOR LACK OF  
16 ) JURISDICTION  
17 M. RUFF, BPH MEMBERS, ) ORDER DIRECTING CLERK OF COURT TO  
18 ) ASSIGN DISTRICT JUDGE  
19 Respondents. )  
20 ) [21-DAY OBJECTION DEADLINE]  
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19 Petitioner is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of  
20 habeas corpus pursuant to 28 U.S.C. § 2254.

21 On September 20, 2024, Petitioner filed the instant habeas petition. He challenges a parole  
22 suitability determination by the California Board of Parole Hearings. The Court is without jurisdiction  
23 to review the substantive due process of a parole suitability determination and will recommend that the  
24 petition be DISMISSED.

25 I. Preliminary Screening of the Petition

26 Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a petition  
27 if it “plainly appears from the petition and any attached exhibits that the petitioner is not entitled to  
28 relief in the district court . . . .” Rule 4 of the Rules Governing Section 2254 Cases. The Advisory

Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's motion to dismiss, or after an answer to the petition has been filed. See Herbst v. Cook, 260 F.3d 1039 (9th Cir.2001). A petition for habeas corpus should not be dismissed without leave to amend unless it appears that no tenable claim for relief can be pleaded were such leave granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971). The Court will review the instant petition pursuant to its authority under Rule 4.

## II. Failure to State a Claim Cognizable Under Federal Habeas Corpus

On April 24, 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). The AEDPA imposes various requirements on all petitions for writ of habeas corpus filed after the date of its enactment. Lindh v. Murphy, 521 U.S. 320 (1997); Jeffries v. Wood, 114 F.3d 1484, 1499 (9th Cir. 1997) (en banc). The instant petition was filed on September 20, 2024, and thus, it is subject to the provisions of the AEDPA.

Petitioner states that he is an inmate of the California Department of Corrections and Rehabilitation serving a sentence of 25 years to life imposed by the Calaveras County Superior Court following his April 30, 2004, conviction for oral copulation and lewd and lascivious acts with a minor under the age of 14 years old. (Doc. 1 at 2.) Petitioner does not challenge either his conviction or sentence; he instead challenges the April 28, 2022, decision of the California Board of Parole Hearings ("Board") finding him unsuitable for parole. He claims the Board's decision is factually unsupported for a number of reasons, thereby depriving him of his due process rights.

Petitioner's claims concern the substantive decision of the Board. These claims are foreclosed by the Supreme Court's decision in Swarthout v. Cooke, 562 U.S. 216 (2011). In Swarthout, the Supreme Court held that the federal habeas court's inquiry into whether a prisoner who has been denied parole received due process is limited to determining whether the prisoner "was allowed an opportunity to be heard and was provided a statement of the reasons why parole was denied." Id., (citing Greenholtz v. Inmates of Neb. Penal and Correctional Complex, 442 U.S. 1, 16 (1979)). Petitioner does not contend he was denied these procedural due process guarantees. According to the Supreme Court, this is "the beginning and the end of the federal habeas courts' inquiry into whether [the prisoner] received due process." Swarthout, 562 U.S. at 220. "'The Constitution,' [the Supreme

1 Court] held, ‘does not require more.’” Id., (quoting Greenholtz, 442 U.S. at 16). Therefore,  
2 Petitioner’s challenges to the Board’s denial of parole fail to present cognizable federal claims for  
3 relief, and the petition should be dismissed.

4 **ORDER**

5 Accordingly, the Clerk of the Court is HEREBY DIRECTED to assign a United States District  
6 Judge to this case.

7 **RECOMMENDATION**

8 For the foregoing reasons, the Court HEREBY RECOMMENDS that the instant petition for  
9 writ of habeas corpus (Doc. 1) be SUMMARILY DISMISSED for failure to state a claim upon which  
10 federal habeas relief can be granted.

11 This Findings and Recommendation is submitted to the United States District Court Judge  
12 assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the  
13 Local Rules of Practice for the United States District Court, Eastern District of California.

14 Within twenty-one (21) days after being served with a copy, Petitioner may file written objections  
15 with the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and  
16 Recommendation.” The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. §  
17 636 (b)(1)(C). Petitioner is advised that failure to file objections within the specified time may waive  
18 the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). This  
19 recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals.  
20 Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be  
21 filed until entry of the District Court's judgment.

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23 IT IS SO ORDERED.

24 Dated: **September 23, 2024**

/s/ Sheila K. Oberto  
25 UNITED STATES MAGISTRATE JUDGE  
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